IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

(Chapter VII, Rule 32(2) (b)

Description of Case

Writ Petition No. 70 of 2007 (S/B)

Date of decision : 24th August, 2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date : 24.08.2007 Initials of Judge

Note : Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No. 70 of 2007 (S/B)

1. Trilok Chandra (SDE) (KGM),
S/o Late Sri Hari Ram
R/o LIG-75 Avas Vikash, Bhotia Paraw
Haldwani ...Petitioner

Versus

1. B.S.N.L. through its,
C.M.D. New Delhi

2. General Manager (TD)
B.S.N.L. Nainital Head Quarter,
Haldwani

3. Deputy General Manager
O/o GMTD Nainital Head Quarter, Haldwani
Chairman of the Committee ... Respondents

Mr. P.C. Jhingan, Advocate for the petitioner.
Mr. Arvind Vashisth, Assistant Solicitor General for the respondents

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

JUDGMENT

Per Hon'ble J.C.S. Rawat, J.

By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:-

> "i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 18.12.2006 passed by the respondent No.2 (Annexure no.1 to this writ petition).
>
> ii) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and which may be passed in favour of the petitioner.
>
> iii) Award the cost of writ petition."

2. Brief facts for the disposal of this writ petition are that the petitioner was initially appointed on the post of Technician in the year 1973 in the Department of Telecommunication (DoT), Government of India. The petitioner was promoted to the post of Supervisor in the year 1983 and thereafter in the year 1991, he was promoted to the post of Junior Telecom Officer. In the year 2000, a company in the name and style of 'Bharat Sanchar Nigam Limited' (hereinafter referred as BSNL) came into existence and the telecommunication operations undertaken by the DoT were made over to the said company (BSNL). The services of the employees of DoT were made over to the BSNL on deputation. Thereafter, the Government of India invited option from the employees of DoT belonging to class-III and class-II posts for being absorbed in BSNL or to take V.R.S. The petitioner alongwith other similarly situated employees submitted their options for being absorbed as permanent employee of BSNL and their options were accepted. It was further alleged in the writ petition that the petitioner at present is working as Sub-Divisional Officer. It was further alleged that on 18.07.2006, A.G.M. (Planning) sent a letter to the petitioner to attend before the Committee on 19.07.2006 regarding discrepancy in HSD required and consumed in C-Dot Exchange, Haldwani. The petitioner was also asked to submit counter statement on the subject. The petitioner submitted his statement. Thereafter, the Committee submitted its report. It was further alleged that the petitioner was never given chargesheet or imputations. The respondent No. 3 passed the impugned order dated 18.12.2006 directing recovery of Rs. 34,904/- from the salary of the petitioner. It was further alleged that the impugned order has been passed in total

disregard and against the principle of natural justice. The petitioner also made protest to Account Officer for deducting the said amount but the Account Officer rejected the same by stating that the same was being made in pursuance to the impugned order. Feeling aggrieved by the said order, the petitioner has preferred this petition.

3. The respondents have filed counter affidavit and pleaded that the petitioner was given full opportunity to represent his case before the Committee in respect of discrepancy in HSD received and consumed in D-Dot Exchange, Haldwani in the year 2005. The order of recovery from the salary of the petitioner has been passed after the inquiry by the Committee against total cost of diesel of Rs. 69,808/- which was actually not brought at site by the petitioner. It was further pleaded that the Committee gave full opportunity to the petitioner to represent his case before the Committee. The Committee observed that there were some manipulations in record done by the petitioner to shift his responsibility. It was further pleaded that Sri Balak Ram who was also employee of the department also gave documentary support to favour the petitioner, as such, he was equally held responsible for the same. It was further alleged that the petitioner was habitual of making false payment bills, short supply of diesel etc. It was further pleaded that the recovery order dated 18.12.2006 has been passed after due consideration of all facts on the basis of fact finding report of the Committee. The petitioner was also given full opportunity to present his case. At last, it was pleaded that the writ petition is devoid of merit and is liable to be dismissed.

4. The petitioner has also filed rejoinder affidavit reiterating the same averments which he has made in he writ petition.

5. We have heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner contended that the impugned order passed by the respondent No. 3-Deputy General Manager directing recovery of a sum of Rs. 34,904/- from the salary of the petitioner is illegal; arbitrary and against the principle of natural justice. It was further contended that the Disciplinary Authority neither ordered any inquiry nor any Inquiry Officer was appointed to inquire about the misconduct committed by the petitioner. The petitioner was never served any chargesheet for the alleged misconduct committed by him. It was further contended that the alleged inquiry by which the responsibility of the petitioner was fixed was an internal inquiry only to investigate as to who was responsible for committing the wrong and it was not the Departmental Inquiry. Mr. Arvind Vashisth, learned Assistant Solicitor General for the respondents refuted the contention.

7. Perusal of the record reveals that the impugned order for recovery was passed by respondent No. 3 on 18.12.2006. There is no dispute that prior to the enforcement of BSNL Conduct, Discipline and Appeal Rules, 2006 (hereinafter referred as Rules, 2006), CCA Rules were applicable for the same. Rules, 2006 came into force w.e.f. 10th October, 2006. Rule 58 sub-Rule 3 provides as under:-

(i) Any rules corresponding to these rules in force immediately before the commencement of these rules and applicable to the employees to whom these rules apply, are hereby repealed, provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules, provided further that such repeal shall not affect the previous operation of the rules so repealed and contravention of any of the said rules shall be punishable as if it were a contravention of these rules.

(ii) An appeal pending at the commencement of these rules against an order made before the commencement of these Rules shall be considered and orders thereon shall be made in accordance with these Rules.

(iii) The proceedings pending at the commencement of the Rules shall be continued and disposed, as far as may be, in accordance with the provisions of these Rules, as if such proceedings were proceedings under these Rules.

(iv) Any misconduct, committed prior to the issue of these Rules, which was misconduct under the superseded Rules, shall be deemed to be misconduct under these rules.

8. Rules 35 provides for the procedure for imposing the minor penalty. The same is quoted hereunder:-

(1) Where it is proposed to impose any of the minor penalties specified in Clause (a) to (d) of Rule 33, the employee concerned shall be informed in writing of the imputation of the misconduct or misbehavior against him ad shall be given an opportunity to submit his written statement of defence within a specified period (not exceeding 15 days). The defence statement, if any, submitted by the employee shall be taken into consideration by the disciplinary authority before passing orders.

(2) The record of the proceeding shall include:

a) a copy of statement of imputations of misconduct or misbehavior delivered to the employee;

b) his orders statement if any; and

c) the orders of the competent authority together with the reason thereof.

9. It is evident form the perusal of the above rules that Rules, 2006 were applicable on the date when the impugned order for the recovery of the aforesaid amount was passed by the respondent No. 3. The inquiry which was conducted by the respondents is annexed as annexure-4 to the writ petition. The inquiry report clearly reveals, at the outset, a committee was constituted to examine the discrepancy in diesel receipt and consumed in C-DOT Exchange, Haldwani made on 18.07.2006, 19.07.2006 and 19.08.2006. The report further indicates that on the first meeting held by the Committee on 18.07.2006, it was decided to have statement of both the concerned officers, i.e. the petitioner Trilok Chandra and Balak Ram, Electrician on 19.07.2006. They submitted their statement alongwith supporting document in their favour. It is further indicated in the report that both the officers also submitted their counter reply and the Committee after going through the entire record came to the conclusion that both the officers were jointly responsible for the discrepancies and lapses. Thus, the petitioner never appeared as a delinquent officer before the Committee.

10. It is evident from the perusal of the Committee report that the Committee was never constituted to hold Departmental Inquiry against the petitioner. The inquiry which was conducted was an internal fact finding inquiry prior

to the Departmental Inquiry. We have also summoned the record from the respondents with regard to the inquiry. The learned Assistant Solicitor General for the respondents was specifically asked to show us from the record that the Disciplinary Authority has passed any order holding Departmental Inquiry against the petitioner. The learned Assistant Solicitor General for the respondents could not demonstrate us that any Departmental Inquiry was ordered by the competent authority. The learned Assistant Solicitor General also could not demonstrate us that after holding the Departmental Inquiry, the competent authority decided that the case did not fall to provide major penalty and as such a notice alongwith the imputation of the charges was given to the petitioner. It is revealed from the record summoned from the Departmental that after conclusion of the inquiry conducted by the Committee, a notice was given to the petitioner to provide receipt of the diesel purchased by him which he failed to produce before the fact finding committee.

11. As we have noticed in rule 35 quoted above that the delinquent employee should be informed in writing of the imputation of mis-conduct or mis-behaviour against him and shall be given an opportunity to submit his written statement on defence within a stipulated period not exceeding 15 days. If the delinquent employee submits the reply, the Disciplinary Authority would take it into consideration before passing appropriate order of the punishment. The learned Assistant Solicitor General could not demonstrate us that any notice fulfilling the requirement of rule 35 (1) had been given to the delinquent employee, i.e. petitioner. In view of the above rules, the competent authority should have passed the order to the effect that the Departmental inquiry should be

conducted in the matter against the petitioner and thereafter, the procedure for holding the inquiry should have been taken in this matter. The petitioner should have been informed in writing of the imputation of misconduct or misbehavior against him and should be given opportunity to defend himself as contemplated under rule 35. It was also incumbent on the respondents No. 3 after holding the inquiry and taking into account the defence statement to come to the conclusion that there should not be a major penalty in this matter. Thereafter, a notice to the proposed punishment should have been given to the petitioner. The competent authority in the case in hand had neither followed the procedure nor given any opportunity to the petitioner as provided under Rules, 2006. Therefore, the impugned order is bad in the eyes of law and is liable to be quashed on this score. The petitioner is entitled to receive the money which has been deducted from his salary till today. However, it is made clear that the competent authority would be at liberty to initiate fresh proceeding in conformity with the relevant rules applicable in this matter. The Competent Authority if comes to the conclusion that the petitioner had committed the misconduct, he may be awarded a fresh punishment as provided under the rules.

12. For the foregoing reasons, the writ petition is allowed and the impugned order dated 18.12.2006 is hereby quashed. The petitioner is entitled to receive the money which has been deducted from his salary till today. However, it is made clear that the competent authority would be at liberty to initiate fresh proceeding in conformity with the relevant rules applicable in this matter. The Competent Authority if comes to the conclusion that the petitioner had

committed the misconduct, he may be awarded a fresh punishment as provided under the rules.

13. The writ petition is allowed to the above extent accordingly.

14. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 24th August, 2007
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